



UPDATE Products Liability Group

JANUARY 2011

Publicly Available Database Regarding the Safety of Consumer Products to Go Live on March 11, 2011

The Consumer Product Safety Commission (CPSC) is in the final stages of launching a publicly available database that will allow the public to search for information regarding product safety incidents and recalls. The searchable database will go live on March 11, 2011, through the commission's Web site <http://www.SaferProducts.gov>. The launch of the database has significant business and legal implications for manufacturers, private labelers, distributors, and retailers of consumer products because, for the first time, the public will have almost immediate access to information that could precede a recall, a government investigation, or litigation.

BACKGROUND

The implementation of the database was one of several significant changes made by Congress in the area of product safety when it passed the Consumer Product Safety Improvement Act of 2008 (CPSIA). The rules pertaining to the establishment of the database were approved after a series of contentious debates and a 3-2 vote along party lines by members of the CPSC.

WHAT WILL BE CONTAINED IN THE DATABASE?

The database will contain "reports of harm" regarding any injury, illness, or death (or any risk of injury, illness, or death) relating to the use of a consumer product. Reports of harm can be submitted by virtually anyone, including consumers, government agencies, health care professionals, consumer advocates, and even plaintiffs' attorneys. To qualify for publication, a report of harm must contain certain information, including (1) a description of the consumer product; (2) the name of the manufacturer; (3) the harm related to the product; and (4) the date of the alleged incident. The database will also contain information regarding recalls of products. The new Web site will permit users to send content to social networking sites, and as a result, information can be spread to millions within a matter of minutes.

WHAT TYPES OF PRODUCTS WILL BE INCLUDED?

The database is designed to report on incidents involving products or substances within the jurisdiction of the CPSC. The CPSC regulates over 15,000 types of consumer products used in the home, in sports, in recreation, and in schools. Moreover, the CPSC regulates all manufacturers, retailers, importers, and distributors of consumer products regardless of their

size, number of employees, or income.

Products not regulated by the CPSC include automobiles and other on-road vehicles, tires, boats, alcohol, tobacco, firearms, food, drugs, cosmetics, pesticides, and medical devices. However, the lines are often blurry. For instance, although pharmaceutical and nutritional supplement companies are regulated by the FDA, the CPSC has stated in commentary that the database will include complaints about drug product packaging, which is within the CPSC's jurisdiction. It is prudent for all product manufacturers to develop procedures in the event that a report of harm or product recall information is submitted to the CPSC for posting.

WHAT STEPS CAN NOW BE TAKEN TO PREPARE?

The law requires that, to the extent practicable, the CPSC must transmit reports of harm to manufacturers and private labelers within five business days of submission. Manufacturers and other stakeholders should register now to receive such reports.

By law, manufacturers will have only 10 business days (or less, if they receive the reports by mail) before a report of harm must be published in the database. During that time, manufacturers must triage and investigate the complaint, decide whether to submit comments, request that materially inaccurate information or trade secret information be removed from the database, or, in some cases, refrain from making any comments whatsoever. Furthermore, manufacturers must determine (typically within 24 hours) whether Section 15 reporting requirements have been triggered. The requirements are generally implicated when a manufacturer obtains information reasonably supporting the conclusion that a product contains a defect that could create a substantial risk of injury to the public or presents an unreasonable risk of serious injury or death. As a result, it is essential that companies develop procedures and guidelines prior to the launching of the database so that a response plan is in place and appropriate personnel are on notice.

FOR MORE INFORMATION

Attorneys in Robinson & Cole LLP's Products Liability Group are available to help you understand the contours of the new database and to assist you in developing and implementing a risk management program, including the appointment of a database incident report coordinator and/or team. For more information, please contact [John H. Kane](#), [Jeffrey J. White](#), or [Brian P. Henry](#).

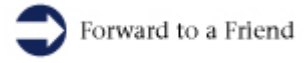
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